HON'BLE SHRI G.S. SINGHVI, THE CHIEF JUSTICE

AND

HON'BLE SHRI JUSTICE C.V. NAGARJUNA REDDY

Writ Appeal No.1086 of 2006

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Between:

Pothamsetti Appayyamma

……Appellant

And

The State of A.P., rep., by its Authorised Officer, Land Reforms, East Godavari, Kakinada and two others

……Respondents

:: JUDGMENT ::

Counsel for the Appellant : Shri P.Venugopal
with
Shri M.Venkata Ramana Reddy

Counsel for Respondent Nos.1 and 2 : Assistant Government Pleader for Revenue

October 26, 2006

Per G.S. SINGHVI, CJ

Having failed to persuade the learned Single Judge to direct respondent Nos.1 and 2 to exclude land measuring Ac.25-97 cts. comprised in Survey Numbers 10/1, 10/2, 11/1, 11/2 of Balramapuram Village and Survey Numbers 89/2, 92/6 of N.N. Patnam, Tuni Mandal, East Godavari District from the unit of respondent No.3 – Allam Godavaramma, the appellant has preferred this appeal under Clause 15 of the Letters Patent.

For deciding the question raised in the appeal, it is appropriate to briefly notice the facts.

After coming into force of the Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Act, 1973 (for short, 'the 1973 Act'), the appellant's father Sanyasayya Padalu, who held large property in N.N. Patnam, Balaramapuram, Latchireddipalem and other villages, filed declaration under Section 8. By an order dated 25-10-1976, Land Reforms Tribunal No.II, Peddapuram (for short, 'the Tribunal') held that the declarant is having 1.9034 S.H. of excess land. On appeal, the Land Reforms Appellate Tribunal (for short, 'the Appellate Tribunal') remanded the case to the Tribunal for fresh determination of the surplus area of the declarant. Thereafter, vide its order dated 24-4-1980, the Tribunal re-determined the surplus area of the declarant and held that he was having 1.8940 S.H. in excess of the ceiling limit. The appellant's mother (respondent No.3) and brothers, who had pursued the matter before the Tribunal and the Appellate Tribunal, did not challenge order dated 24-4-1980 by availing appropriate legal remedy. However, after a period of 15 years, the appellant filed writ petition under Article 226 of the Constitution of India for issue of a

direction to the official respondents to exclude Ac.25-97 cts. of land from the total land surrendered by respondent No.3. The same was registered as Writ Petition No.8351 of 1995.

In the affidavit filed by her, the appellant averred that at the time of marriage, her father gave Ac.25-97 cts. of land situate at Balarampuram and N.N. Patnam Villages of East Godavari District towards 'pasupu kumkuma'. The possession of the lands is said to be delivered to the appellant under karerumas deed executed on 10-2-1970. The appellant further averred that even though at the time of coming into force of the Act she had become major and Ac.25-97 cts. of land had been transferred to her, this fact was not reflected in the declaration filed under Section 8 of the 1973 Act. Still further, she averred that attempts were being made by respondent Nos.1 and 2 to take possession of the land in question.

In the counter-affidavit filed by Shri S.V.S.S.N. Saraswathulu, the then Authorised Officer, Land Reforms Tribunal, Kakinada, it was averred that Shri Allam Sanyasayya Padalu was a declarant in LCC 499/Prp/75. His case was determined by the Tribunal on 25-10-1976 and again vide order dated 24-4-1980. The deponent further averred that the land allegedly gifted by the declarant in favour of the appellant was not reflected in the declaration and on her part, the appellant did not file any objection in response to notice issued in Form-VIII. The verification report also did not disclose that the declarant had gifted a portion of land to his daughter. This fact was also not brought to the notice of the Tribunal and the Appellate Tribunal. According to the deponent, there are no entries in the adangal showing possession of the petitioner. Shri S.V.S.S.N. Saraswathulu also disclosed that the lands of N.N.Patnam and Balaramapuram villages claimed by the appellant were leased out by the declarant to third parties. This is

evinced from the averments contained in paragraphs 3 and 4 of his affidavit, which are reproduced below:

> "3. It is also submitted that the lands under reference situated in N.N. Patnam (v) are said to be leased out to one Gadi Krishnamma (claimant in I.A.No.320/78), Nagam Venkata Suryanarayana Murthy and Nagam Varaha Lakshmi Narasimhamurthy while the lands situated in Balaramapuram (v) are said to be leased out to one Akula Appalaswamy long ago i.e. from the year of 1970. the declarant who was examined as P.W.1, did not state anything about the leases at the first instance and when he was recalled on 26-5-79, he stated that he is managing the lands belonging to his family, that they leased out some of his lands and the lands of his wife; that they leased out the lands of his wife at N.N. Patnam to Gadi Krishnamma etc., and the lands of Balaramapuram to one Akula Appalaswamy.
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> 4. Since the alleged leases were not proved, the appeal in LRA. 59/80 was dismissed. During the pendency of the said appeal, neither the declarant nor the alleged tenants have stated that the lands in question belong to the petitioner herein who is the daughter of the declarant. It is therefore evident that the said lands are not under the possession and enjoyment of the petitioner herein. The petitioner herein is no other than a get up claimant in order to counteract the provisions of the A.P. L.R. (COAH) Act, 1973. As such, the lower Tribunal has rightly included the lands in question in the holding of the declarant."

In para 5 of his affidavit, the deponent raised the plea of availability of alternative remedy by stating that the petitioner could have challenged the order of the Tribunal by filing an appeal, which she has failed to do.

The appellant did not file rejoinder to controvert the aforementioned averments.

Before the learned Single Judge, the only point argued on behalf of the appellant was that since the petitioner (appellant herein)

had become major as on 1-1-1975, she should have been treated as member of joint family and she was entitled to separate holding. This plea was rejected by the learned Single Judge by making the following observations:

> "Since the petitioner got married even before the said amendment was made to the Hindu Succession Act, the petitioner is not entitled to any right as a coparcener. With reference to the Kararunama which is alleged to have executed by the father of the petitioner, alienating the property in question in favour of petitioner towards 'pasupukumkuma', as per the judgment of the Full Bench of this Court, any transfer or alienation must be under a registered document, and it is not the case of the petitioner that any such document was executed in her favour."

Shri P. Venugopal, learned counsel for the appellant fairly conceded that his client did not challenge order dated 24-4-1980 passed by the Tribunal by filing an appeal or by availing other legal remedies, but argued that her right to retain possession of Ac.25-97 cts. of land, which was gifted by her father cannot be defeated, only on the ground of not availing the remedy of appeal. Learned counsel further argued that the declarant's failure to show the land gifted to the appellant in the form of 'pasupu kumkuma' is liable to be excluded form the holding of her father and she is entitled to protection thereof in her capacity as absolute owner. Shri Venugopal relied on the judgment of the Supreme Court in **Government of A.P. v. M. Krishnaveni**[1] and argued that the order under challenge should be set aside because the learned Single Judge failed to give due recognition to the appellant's right to retain possession of Ac.25-97 cts.

In our opinion, there is no merit in the arguments of the learned counsel. Since the appellant did not challenge order dated 24-4-1980

passed by the Tribunal for determination of the surplus area of the declarant, that order will be deemed to have become final. Therefore, by granting declaration in terms of the prayer made by the appellant, this Court cannot indirectly annul, amend or modify that order. It is not the pleaded case of the appellant that she was not aware or had no knowledge about the declaration filed by her father under Section 8 of the 1973 Act and orders dated 25-10-1976 and 24-4-1980 passed by the Tribunal. Therefore, we do not find any justification to entertain the petition filed by her after a period of 15 years and that too when the appellant did not make a prayer for setting aside order dated 24-4-1980.

The omission of the declarant to make a mention of the facts relating to transfer of Ac.25-97 cts. of land in favour of the appellant towards 'pasupu kumkuma' coupled with the fact that a portion of the land had, in fact, been leased out to Gadi Krishnamma, Nagam Venkata Suryanarayana Murthy and Nagam Varaha Lakshmi Narasimhamurthy (these persons were inducted as tenants on the lands of Village N.N. Patnam) and to Akula Appalaswamy (land situated in Village Balaramapuram) militates against the appellant's claim that possession of the land was delivered to her through 'kararunama' dated 10-2-1970.

The judgment of the Supreme Court in **Government of A.P. v. M. Krishnaveni** (supra) on which reliance has been placed by Shri P. Venugopal does not in any manner help the appellant. Rather, the ratio of that judgment goes against her. The facts of that case were that the land owner namely, Thota Chinna Seetharamaiah is said to have given different portions of land to his daughters as 'pasupu kumkuma' at the time of their marriage. On coming into force of the Urban Land (Ceiling and Regulation) Act, 1976, wife of the land owner

Smt.T. Rama Tulsamma filed declaration on behalf of her husband (this was done because he was mentally incapacitated), for herself, two major sons namely, T. Sri Ram Mohan and T. Satish Chandar and minor son T. Sai Kumar. Two married daughters of the land owner filed separate declarations claiming shares in the land by stating that the same had been given to them as 'pasupu kumkuma' at the time of marriage as per age-old custom and tradition of the community. The competent authority opined that the daughters were not entitled to any share in the property of the land owner. All the declarants except the daughters T. Chinna Seetharamaiah filed joint petition stating that they have no objection to surrender the excess land. Thereafter, final statement under Section 9 of the Act was issued. This was followed by notification and declaration issued under Sections 10 (1) and 10 (3). On 23-11-1979, a notice under Section 10 (5) of the Act was issued directing the declarants to surrender the surplus land. The wife and the sons received compensation. After sometime, three sons and three daughters of the land owner filed six writ petitions challenging the final order of the competent authority. The three daughters claimed shares on the basis of 'pasupu kumkuma' as per family arrangement dated 13-11-1970. They also sought exemption in terms of G.O.Ms.No.733, Revenue (UC-II) Department, dated 31-10-1987. The learned Single Judge allowed the writ petition and directed re-opening of the entire case. The Division Bench dismissed the appeal of the State and confirmed the order of the learned Single Judge. The Supreme Court referred to Section 14 (1) of the Hindu Succession Act, 1956 and accepted the claim of two daughters by making the following observations:

> "Section 14(1) of the Hindu Succession Act, 1956 provides that any property possessed by a female Hindu, whether acquired before or after the commencement of this Act,

shall be held by her as full owner thereof and not as a limited owner. Smt. P. Rukmini and Smt. M. Krishnaveni, both daughters of late T Chinna Seetharamaiah, had acquired an absolute right in the lands given to them by their father in the family arrangement on 13.11.1970. They have made categorical statement in the declarations filed by them in the year 1976 immediately after the enforcement of the Act that they were the owners in possession of the lands to the extent of their respective shares. It is not in dispute that the competent authority has not considered the claim of the two declarants as no inquiry was conducted by the authority nor any notice was issued to them inviting their objections before final order concerning the vestment of land in excess of ceiling limit was recorded."

However, the claim of the third daughter namely, Smt.K. Pramila Rani was rejected by making the following observations:

"Admittedly, Smt. K. Pramila Rani did not file statement at all before the competent authority in the prescribed form furnishing the details of land held by her as envisaged under Section 6 of the Act and the competent authority was not obliged to prepare draft statement of her share in the land and serve on her to enable her to file objections under Section 8 of the Act. Therefore, Smt. K. Pramila Rani could not be allowed to contend that no inquiry under Section 8 of the Act was conducted by the competent authority and that the vestment of her surplus land in the State Government was bad and illegal. The claim of Smt. K. Pramila Rani to afford an opportunity to her after about two decades from the date of the vestment of her surplus land in the State Government, could in no circumstances be equated and treated at par with her two sisters, who had filed their independent declarations immediately after the enforcement of the Act, requesting the competent authority to hold an inquiry as per the law regarding their ownership of lands which they received from their father in family arrangement dated 13.11.1970, i.e. much before the Act came into force."

(underlining is ours)

The factual matrix of this case also shows that the appellant had not filed any statement before the competent authority and she did not participate in the enquiry held pursuant to the declaration filed by her father. Therefore, she is estopped from indirectly questioning order dated 24-4-1980 passed by the Tribunal.

No other point has been argued.

In the result, the appeal is dismissed.

G.S.SINGHVI, CJ

C.V.NAGARJUNA REDDY, J

26-10-2006

svs

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[1] (2006) 7 SCC 365